

Judgment...

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R.C.S.No.194/91

Received on : 18/04/1991
Registered on : 24/04/1991
Decided on : 30/08/2012
Duration : 12Ds. 4Ms. 21Yr.

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION

KARAD AT: KARAD

(Before Shri. R.S.Patil (Bhosale))

REGULAR CIVIL SUIT NO.194/1991

Exh.No.

Shri Prakash Jagannath Jadhav }
Age 21 yrs, Occu. Agriculture } **Plaintiff**
R/o Tasawade Tal.Karad Dist.Satara }

Versus

1. Jagannath Bapu Jadhav }
deceased through L.R. }
1A Prakash Jagannath Jadhav }
Age 32 yrs, Occu.Agriculture }
1B Anjirabai Jagannath Jadhav }
Age 70 yrs, }
1C Mangal Babaso Deokar }
Age 40 yrs, Occu.Housework } **Defendants**
No.1A & 1B r/o Tasawade and }
No.1C r/o Kirape both Tal.Karad }
2. Sou Anjirabai Jagannath Jadhav }
Age 56 yrs. Occu. Housework }
3. Ku.Rajendra Jagannath Jadhav }
Age 19 yrs., Occu. Service }
4. Ku.Sanjay Jagannath Jadhav }
Age 15 yrs., Occu. Education }
5. Prakash Anandrao Jadhav }
Age 30 yrs. Occu. Agriculture }

6. Dinkar Shrimant Jadhav }
 Age 55 yrs. Occu. Agriculture }
 Guardian of No.4 Tarubai } **Defendants**
 Jagannath Jadhav }
 Age 35 yrs. Occu. Agriculture }
7. Tarubai Jagannath Jadhav }
 Age 30 yrs. Occu. Housework }
 r/o Tasawade Tal.Karad Dist.Satara }

Adv.Shri U.L. Patil : Advocate on behalf of Plaintiff

Adv.Shri P.H. Chavan : Advocate for defendant no.1A to 3

Adv.Shri J.B. Mohite : Advocate for defendant no.4

Adv.Shri M.S. Bhosale : Advocate for defendant no.5, 6

Adv.Shri P.V. Dhapare : Advocate for defendant no.7

JUDGMENT

(Delivered on 30th August, 2012)

This is a suit for partition, separate possession and permanent injunction.

Plaintiff 's case in short is as follows :-

2) Suit properties are situated at village Tasawade having description as follows

Sr. No.	Gat Number	Area		Value		Share
		He.	Are	Rs.	Ps.	
1	29	00	41	3	44	8 Aane
2	660	00	52	4	94	8 Aane
3	667	00	40	5	12	8 Aane
4	824	00	25	3	56	8 Aane
5	822	00	59	7	19	8 Aane

3) Suit 1A property is village Panchayat Milkat No.30 and suit 1B property is a open space situated at village Tasawade having East-West width 25 ft and South-North length 7 ft which does not carry village Panchayat Milkat number. The genealogical chart given by plaintiff is as follows :

Jagannath Defendant no.1

Anjirabai (wife Defendant no.2)

Mangal

Prakash (Plaintiff)

4) It is the contention of plaintiff that defendant no.1 and 2 are father and mother of plaintiff respectively. Plaintiff is having one real sister i.e namely Mangal, who is married in the year 1984 and residing in her matrimonial houses at Kirape. It is the further contention of plaintiff that defendant no.1 is habitual drinker of wine since last 20 years and does not know the consequences of the act done by him. He was never Karta of joint family. Defendant no.2 is looking after the welfare of defendants family. Defendant no.1 has not divorced defendant no.2. He has performed second marriage with one Tarubai, a daughter of Mahadeo Patil resident of Varunji illegally and, residing with her since last 20 years. The said Tarubai has begotten two sons namely Rajendra and Sanjay from defendant no.1. But, they are not legal heirs of defendant no.1 Jagannath. Defendant no.1 and said Tarubai have illegally mutated the names of defendant no.3 and 4 on the record of rights of suit properties. Hence, they are made as defendants in this

proceeding. All above mentioned suit properties are ancestral properties of plaintiff and defendant no.1. Defendant no.5 and 6 have instigated defendant no.1 to sell Gat No.29 and 667 to them. Defendant no.1 sold said Gat numbers to defendant no.2 and 6 without legal necessities of the family. Hence, plaintiff has made defendant no.5 and 6 as a party to this proceeding. In view of Sec.12 of the Rehabilitation Act suit properties are prohibited from alienation since 12/11/1982. Therefore, sale deeds executed in favour of defendant no.5 & 6 by defendant no.1 are void-ab-initio. Defendant no.5 and 6 never get possession of Gat No.29 and 667 on the basis of sale deeds. The entry of their names on the record of rights of said two Gat Numbers are hollow one. Defendant no.1 has given one third share from suit properties to plaintiff from Southern side. Adjacent to it, defendant no.1 has given share to defendant no.2 and he himself is cultivating the remaining land of Northern side. In such way, plaintiff and defendants are cultivating suit properties as per their convenience. Now-a-days, defendant no.1, defendant no.3 to 6 are obstructing plaintiff from cultivating the suit properties. Hence, plaintiff has instituted this suit and asked for partition of all suit properties by metes and bounds. Plaintiff has also asked for permanent injunction against defendants that they should not cause obstruction to his 1/3 share over suit properties through themselves or through others.

5) Defendant no.7 has filed her WS at Exh.116 and denied all contentions raised by plaintiff against her. It is her contention that plaintiff has not brought all agricultural lands in common hotchpotch. The genealogical chart given by plaintiff is wrong one. The allegations made by plaintiff against all habits of defendant

no.1 are false one. It is her contention that marriage of defendant no.1 and defendant no.7 has taken place before about 58 years as per Hindu Religion rituals. Since that marriage, she is residing with defendant no.1 at Tasawade in suit properties. Defendant no.3 and 4 are her legal children begotten by her from defendant no.1. Defendant no.1 has sold Gat No.29 and 667 to defendant no.5 and 6 for the legal necessity of joint family of plaintiff and defendants. Defendant no.1 sold said two Gat numbrs for meeting expenses of marriage of his daughter namely Mangal, who is real sister of plaintiff. Hence, now-a-days, defendant no.5 and 6 are cultivating said Gat numbers. Plaintiff is having no right, title and interest in suit properties. Plaintiff is illegitimate son. He cannot ask for partition of suit properties.

6) Defendant no.6 has filed separate WS at Exh.49 and denied all contentions raised by plaintiff against him. It is his contention that defendant no.1 was in dire legal necessity of an amount for the welfare of his family. Defendant no.6 inquired about the same and purchased 10 Are land from Gat No.29 from defendant no.1 for Rs.5,000/- in the year 1989. Since that time, he is cultivating said land. There is a joint family of defendant no.1, 2, 4 and defendant no.1 is Karta of joint family. He was in need of amount for the expenditure of his daughter and to pay loans of other persons. Therefore, he sold 10 Are land from Gat No.29 to defendant no.6. The genealogical chart given by plaintiff is not correct. Mangal, the sister of plaintiff is necessary party to the proceeding. Plaintiff has not made her as a necessary party to the proceeding. Hence, this suit is hit by the principle of non joinder of necessary parties. Defendant no.1 is a good person and not having

any bad habits. He entered in sale transaction with defendant no.5 and 6 for the legal necessity of joint family of plaintiff and defendant no.2 to 4. Plaintiff and defendant no.1 to 4 have brought this suit by entering in collusion. The land of defendant no.1 to 4 was below the ceiling area. Therefore, Rehabilitation Act was not applicable to his lands in the year 1983-84. Therefore, after due inquiry Sub-registrar Karad registered the sale deed executed by defendant no.1 in favour of defendant no.6 of Gat No.29. Lastly, defendant no.6 has prayed for dismissal of suit.

7) Defendant no.1 has filed his WS at Exh.48 and denied all contentions raised by plaintiff against him. It is his contention that Tarubai is legally wedded wife and defendant no.3 and 4 are his legitimate son. Plaintiff is making false complaint by taking undue advantage of hollow mutation entries on his name on the record of rights of suit properties to the 1/3 share. He has sold Gat No.29 and 667 to defendant no.5 and 6 for legal necessity of his joint family and handed over possession of both said Gat numbers to them. Plaintiff and defendant no.1 and 2 are not cultivating suit properties as pleaded by plaintiff in his plaint para no.7. Defendant no.1 has never allowed plaintiff or defendant no.2 to cultivate any part of suit property. He has no reason for the same. Plaintiff is not having 1/3 share in suit properties as pleaded by him. Therefore, he is not entitled for any share and permanent injunction relief as prayed for. Plaintiff has not added Mangal, the real sister of plaintiff and Tarubai as a party to this proceeding. Hence, this suit is not tenable. He has not brought all joint family properties in common hotchpotch. Hence, this suit is not tenable. Lastly, defendant no.1 has prayed for dismissal of suit with cost.

8) Defendant no.5 has filed his WS at Exh.40 and denied all contentions raised by plaintiff against him. It is the contention of defendant no.5 that in the year 1983 defendant was in need of amount for the marriage of his daughter. So also, in the year 1984 he was in need of an amount to pay loan and to meet the expenses. Hence, after making due inquiry defendant no.5 has purchased Gat No.667. Defendant no.5 has purchased Northern 1/4 portion of Gat No.29 along with right to take water from Hanuman Water Supply Irrigation Scheme and 1/2 share from Gat No.667 along with right to take water from above mentioned irrigation scheme from 28/3/1983 and 17/4/1984 respectively for total amount of Rs.20,000/-. Since execution of said sale deeds, he is in possession of said properties. The land holding of defendant no.2 to 4 is less than the ceiling area. Therefore, the provisions of the Rehabilitation Act are not applicable to said sale deed. After making due inquiry Sub-registrar Karad registered said sale deed. Defendant no.1 is not having bad habits of drinking wine. Plaintiff and defendant no.2 are not cultivating suit properties as pleaded by plaintiff. Mangal, the real sister of plaintiff is not necessary party to this proceeding. Without impleading her as a party to the proceeding this suit is not tenable. Plaintiff is having no share in suit properties. Plaintiff has purposely showed wrong age of himself & age of defendant no.3 and 4. Plaintiff and defendant no.1 and 2 have hands in gloves and defendant no.1 and 2 have instituted this suit through plaintiff. This suit deserve to be dismissed with cost.

9) During pendancy of the suit defendant no.1 had died and plaintiff has brought his L.Rs on record. The L.Rs of deceased defendant no.1 i.e defendant no.1B and 1C have filed their separate

WS at Exh.103. In their WS, said defendants admitted the suit of plaintiff. It is their contention that defendant no.3 and 4 are illegitimate son of deceased defendant no.1. The marriage of deceased defendant no.1 and defendant no.1B Anjirabai has taken place before about 55 years at Tasawade as per Hindu Religion and rituals and they were living as a husband and wife. The said Anjirabai has begotten plaintiff and Mangal from deceased defendant no.1. After marriage, defendant no.1 went under the influence of drinking habit and sold some properties. Deceased defendant no.1 performed second marriage with Tarubai, a daughter of Mhadeo Patil of Varunji without giving divorce to Anjirabai. The said Tarubai gave birth to sons namely Rajendra and Sanjay, defendant no.3 and 4 who are illegitimate sons of defendant no.1 and, therefore, they are having no right in ancestral properties. Present plaintiff has not mentioned few Gat numbers situated at Tasawade as a suit property. Gat No.213, 273, 639 situated at village Tasawade are required to be brought on record as a suit property. Therefore, necessary direction may kindly be given to plaintiff for making said Gat numbers as a suit property. Plaintiff and defendant no.1 are having 4/9 share in all suit properties. Defendant no.1C is having 1/4 share in all suit properties. Hence, their share may kindly be allotted to them.

10) Defendant no.4 has filed his WS at Exh.82 and denied all contentions raised by plaintiff against him. It is her contention description given by plaintiff of suit properties is wrong one. The genealogy chart given by plaintiff is false one. Defendant no.1 never went under the influence of liquor. Defendant no.3 is a legitimate son of defendant no.1. His mother Tarubai is legitimate

wife of defendant no.1. The marriage of Tarubai and defendant no.1 has taken place before about 54 years as per the Hindu Religion and rituals. Since the marriage, she is residing with defendant no.1 at Tasawade in suit property. Defendant no.1 has sold Gat No.29 and 667 to defendant no.5 and 6 for the legal necessities of joint family and for the marriage of his daughter Mangal, who is sister of plaintiff. Plaintiff and his mother are not in possession and cultivating suit properties as pleaded by him. There was a joint family of plaintiff and defendant no.1 to 4 along with Tarubai. Plaintiff is having full knowledge that Gat No.29 and 667 are sold for meeting marriage expenses of his sister Mangal. Now, he is challenging said sale deeds. Lastly, defendant no.4 has contended that defendant no.1 to 4, Tarubai and Mangal are having shares in suit properties. So, partition of all suit properties may kindly be done and shares of all said persons may kindly be fixed.

11) Defendant no.3 and 4 have filed their additional WS at Exh.121. It is their contention that Tarubai Jagannath Jadhav was the first wife of defendant no.1, Jagannath Jadhav and hence having share in suit property. Defendant no.3 and 4 have no objection to given her share from all suit properties. It is their further contention that plaintiff has no right to ask for partition. Defendant no.1 has executed will deed in favour of defendant no.3, 4 and 7 and alienated his share from suit properties to them. Therefore, share of defendant no.3 and 4 is increased. Defendant no.3 and 4 are ready to give stamp duty on their share.

12) Following issues have been framed at Exh.51 on

14/3/1996. I am recording my findings on each issue with reasons thereon as follows :-

ISSUES

FINDINGS

- | | |
|--|--------------------|
| 1) Whether the plaintiff is having interest in suit property? | In the affirmative |
| 2) Whether the defendant has sold Gat No.29 and 667 to defendant no.5 and 6 for the legal necessity of the family? | In the affirmative |
| 3) Whether he is entitled for partition and separate possession of his share? | In the affirmative |
| 4) Whether he is entitled for perpetual injunction as prayed for? | In the negative |
| 5) What Order and relief? | As per final order |

REASONS

13) Plaintiff has filed his evidence affidavit at Exh.65. He has examined witness no.1 Bhimrao Kesu Jadhav at Exh.66. Plaintiff has examined his sister Mangal Babaso Deokar at Exh.129. Plaintiff has filed his evidence close pursis at Exh.136. No evidence is adduced on behalf of defendants.

14) Plaintiff has produced 7x12 extract of Gat No.660, 824, 822, 29, 667 at Exh.8 to 12 respectively. Plaintiff has also produced assessment list extract of Milkat No.30, 7x12 extract of Gat No.213, 273, 639 at Exh.146, 143, 144 and 145 respectively. No evidence is adduced on behalf of defendant. In the light of above stated evidence adduced by both parties, I proceed to record my findings as follows.

AS TO ISSUE No.2 :-

15) It is the contention of plaintiff that defendant no.1 is under the influence of bad habits of drinking wine since last 20 years and without any legal necessity of joint family he sold Gat No.29 and 667 to defendant no.5 and 6. As against this, it is the contention of defendants that defendant no.1 is a gentlemen and having no bad habit of drinking wine. Defendant no.1 has specifically pleaded in his WS that he sold Gat No.29 and 667 to defendant no.5 and 6 for paying the expenses incurred to him for the marriage of his daughter Mangal, who is the real sister of plaintiff and present defendant no.1C and for meeting home expenditure. Defendant no.3 and 4 are the sons of defendant no.1, 5 and 6 who are purchaser of Gat No.29 and 667 and defendant no.7, the another wife of defendant no.1 have filed their WS on record and raised same contentions. In order to rebut said pleading of defendants plaintiff has not adduced single evidence on record except his mere words. He has also not adduced evidence on record in order to show that his father was in bad habit of drinking wine. He has produced evidence affidavit of witness namely Bhimrao Kesu Jadhav at Exh.66. But, said witness did not remain present in the Court for his cross examination. Hence, his evidence is not useful for plaintiff.

16) Defendant witness no.3 Mangal Babaso Deokar i.e real sister of plaintiff and present defendant no.1C has adduced her evidence affidavit at Exh.29 and raised same contentions. But, said witness has admitted in her cross examination that at the time of marriage in the year 1994 her father was having no source other than agricultural land. He was earning meager yield from the

agricultural land and anyhow maintaining his family. Her father has expended Rs.20,000/- in her marriage. So, said admissions given by witness Mangal Deokar clearly shows that at the time of her marriage defendant no.1 was not having much amount and considering all above circumstances, I do find substance in the contention of defendant that he sold Gat No.29 and 667 for the legal necessities of joint family. In addition to this, I do not find probability in the contention of plaintiff that his father went under the influence of liquor since last 20 years and he was enable to understand the nature and consequences of his act. Because, if any person went to such extent under the influence of liquor then it is not possible for him to survive and, in such circumstances he would not have stopped by selling only suit properties, but certainly he would have sold other properties for fulfilling his bad habits. Hence, for all above stated reasons, I do not find substance in the contention of plaintiff. Hence, for all above stated reasons, defendants have proved that defendant no.1 has sold Gat No.29 and 667 to defendant no.5 and 6 for meeting joint family expenses of plaintiff and defendant no.1, 2, 3, 4 and 7. Hence, I am recording my finding on issue no.2 in the affirmative.

AS TO ISSUE No.1 and 4 :-

17) It is the contention of plaintiff that marriage of his mother with defendant no.1 has taken place before about 40 years and he himself, his sister are begotten by his mother from defendant no.1. The defendant no.1 has not specifically denied said contention of plaintiff in his WS. Defendant no.1 has only pleaded in his WS that the contentions mentioned in para 3 of the plaint are partly true. Defendant no.1 has not given details as to

which part of contentions raised by plaintiff in para no.3 of plaint is correct and which part of contentions raised by plaintiff in para no.3 of plaint is not correct. Hence, in my view, due to said evasive denial by him considering the contention raised by plaintiff in para no.3 that marriage of his mother with defendant no.1 has taken place before about 40 years is true and correct.

18) It is further contention of plaintiff that since last 20 years defendant no.1 went under the influence of habit of drinking wine and he was unable to know the nature and consequences of his act. So also, without giving divorce to defendant no.2 i.e mother of plaintiff he is illegally residing with defendant no.7 Tarubai since last 20 years and from said relation defendant no.7 Tarubai gave birth to defendant no.3 and 4. Defendant no.1, 3, 4 and 7 have denied said contention raised by plaintiff in their WS. Defendant no.1 has specifically pleaded in his WS that he performed marriage with defendant no.7 as per the Hindu Religion's rituals and defendant no.3 and 4 are legitimate sons begotten by defendant no.7. Considering said rival pleadings, now burden is cast on the shoulder of plaintiff to prove that the marriage taken place between defendant no.1 and 7 was illegal one. In order to prove said fact, plaintiff has to prove that the marriage between defendant no.1 and 7 has taken place after the implementation of the Hindu Marriage Act, 1955. The Hindu Marriage Act, 1955 came into force on 18th May, 1955. Because, in view of Sec.11 of the Hindu Marriage Act, 1955 if any person performs another marriage with a women during subsistence of his first marriage then his second marriage becomes void. Hence, it was the duty of plaintiff to prove that the marriage of defendant

no.1 and defendant no.7 has taken place after after the implementation of said Act 18th May, 1955. But, in order to substantiate said contention, plaintiff has not adduced a single evidence on record except his mere words. Plaintiff has only contended in his evidence affidavit that the contention of defendant no.1 about his illegal marriage with defendant no.7 is false one. It is true that plaintiff has not been cross examined by the advocate for defendant on this point. But the mere words of plaintiff are not sufficient to believe his contention that marriage of defendant no.1 and 7 is illegal one on the background that defendant no.1 who is a father of plaintiff has specifically contended that he has performed legal marriage with defendant no.7. As stated above, plaintiff has failed to prove that his father was having bad habit of drinking wine and due to influence of liquor he was unable to understand the nature and consequences of his act. Hence, plaintiff has failed to prove that due to influence of liquor defendant no.1 was unable to understand the nature and consequence of his act and in such situation he kept illicit relations with defendant no.7 since last 20 years. Hence, for all above stated reasons, I do find substance in the contention that marriage of defendant no.1 and 7 has taken place before about 58 years i.e prior to year 1955.

19) As stated above, I came to conclusion that marriages of defendant no.1 with defendant no.2 and defendant no.7 have taken place prior to the year 1955. In view of Sec.10 of the Hindu Succession Act, if there are more widows than one, all widows together get one share. In the case in hand, ancestral nature of suit properties prescribed in para 1 and 1A is admitted by both parties. Plaintiff and defendant no.1C are son and daughter begotten by

defendant no.2 from defendant no.1, is admitted fact by all other defendants. So also, defendant no.3 and 4 are the sons begotten by defendant no.7 from defendant no.1 is also admitted fact by plaintiff and remaining defendants. During pendency of the suit defendant no.1 has died on 18/9/2005. Hence, in view of amendment to Hindu Succession Act, 2005, plaintiff, defendant no.1C, defendant no.3, 4 are entitled for 1/5 share each and defendant no.2 and defendant no.7 being a widow of deceased Jagannath are entitled for 1/5 share jointly. During pendency of the suit, defendant no.2 had died on 13/10/2009. Hence, in view of Sec.15 of the Hindu Succession Act her 1/10 share is devolved on her son and daughter i.e plaintiff and defendant no.1C, Mangal. Hence, they are entitled for 1/4 share each. As stated above defendants have proved that deceased defendant no.1 has sold Gat No.29 and 667 for legal necessities. Hence, plaintiff and defendant no.1C, 3, 4 and 7 are not having any share in said two properties. But, as stated above in remaining suit properties mentioned in para 1 and 1A of the plaint, plaintiff and defendant no.1C are entitled for 1/4 share each and defendant no.7 Tarubai is entitled for 1/10 share in said suit properties. Hence, for all above stated reasons, I am recording my findings on issue no.1 and 3 in the affirmative and accordingly.

AS TO ISSUE No.4 :-

20) It is the contention of plaintiff that defendant no.1 has allotted 1/3 share in all suit properties to him for cultivation and now-a-days, defendant no.1 and 3 to 6 are causing obstruction to his cultivation over said suit properties. The said contention of

plaintiff is specifically denied by defendant no.1 and other defendants in their WS. It is true that name of plaintiff is mutated to the 2 Aane 8 Pai share on 7x12 extract of all suit properties except Gat No.29, 667 and Milkat No.30. But, in order to show that plaintiff is in possession of Southern 1/3 portion of agricultural lands mentioned in para 1 of plaint, plaintiff has not adduced a single evidence on record. Even, there is no averment to that effect in his evidence affidavit. Plaintiff could very well prove said fact by examining adjacent land owners and producing documentary evidence. But, plaintiff has not taken such efforts. Hence, plaintiff has failed to prove that he is in possession of Southern 1/3 portion of agricultural land mentioned in para 1 of the plaint. Hence, question of causing obstruction to his said possession by defendant no.1, 3 to 6 does not arise. Plaintiff has asked for partition of open place having East-West 25 ft and North-South 25x7 ft situated at village Tasawade. It is the case of plaintiff himself that said open place does not bear any village Panchayat number. Plaintiff has not adduced a single evidence on record in order to show the existence of said suit property mentioned in para 1B of the plaint. Hence, plaintiff has failed to prove that suit 1B property as pleaded by him is available for partition. Hence, certainly he is not entitled for perpetual injunction as prayed for.

14) Hence, I proceed to pass following order :-

ORDER

- 1} Suit is hereby partly decreed.
- 2} It is hereby declared that plaintiff, defendant no.1C are entitled for 1/4 share each in all suit properties except Gat

No.29 and 667 mentioned in para 1 and 1A of the plaint.

- 3} It is also hereby declared that defendant no.3, 4 are entitled for 1/5 share and defendant no.7 is entitled for 1/10 share in all suit properties except Gat No.29 and 667 mentioned in para 1 and 1A of the plaint.
- 4} R & P be sent to Collector Satara for effecting partition of agricultural land mentioned in para 1 of the plaint.
- 5} Court Commissioner be appointed for effecting partition of village Milkat No.30.
- 6} A preliminary decree be drawn up accordingly.

30th August, 2012
KARAD

R.S. Patil (Bhosale)
Jt.Civil Judge Senior Division, Karad

Pramod D. Jamdar
Stenographer